

### **REMARKS/ARGUMENTS**

Claims 1-37 are pending in the application. Claims 6, 7, 24, and 25 were previously withdrawn from further consideration pursuant to the Examiner's requirement for restriction.

Claims 1-5, 8-23, and 26-37 stand rejected. Claims 1, 17-19, and 35-37 have been amended in this paper.

Applicants believe the amendments made herein add no new matter. Any amendment to the claims which has been made in this Amendment and Response, and which has not been specifically noted to overcome a rejection based on prior art, should be considered to have been made for a purpose unrelated to patentability, and no estoppel should be deemed to be attached thereto. Reconsideration and reexamination of the application is respectfully requested in view of the amendments and the following remarks.

#### **Rejection Under 35 U.S.C. §112, ¶1**

Claim 37 stands rejected under 35 U.S.C. §112, ¶1, as allegedly failing to comply with the written description requirement. The rejection is traversed.

The Examiner asserts that "The claim(s) contains subject matter that was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification, as originally filed, does not provide any support/description for the mounting panel being secured to the mounting panel nor the tilt mechanism being secured to the tilt mechanism. In addition, the specification, as originally filed, does not provide any support and/or description for the language 'without rotation ... tilt mechanism'."

Claim 37 has been amended and now calls for one of the mounting panel and the tilt mechanism to be secured to the other of the mounting panel and the tilt mechanism. Thus, claim 37 does not call for the mounting panel to be secured to the mounting panel or the tilt mechanism

to be secured to the tilt mechanism. Furthermore, the phrase “without rotation of said reflective element assembly relative to the tilt mechanism” has been removed. Thus, claim 37 fully complies with the written description requirement.

Applicants request that the rejection be withdrawn, and that claim 37 be allowed.

**Rejection Under 35 U.S.C. §102(b)**

Claims 1, 12, 13, 18, 19, 30 and 36 stand rejected under 35 U.S.C. §102(b) as allegedly anticipated by U.S. Patent No. 4,488,778 to Polzer et al. The rejection is traversed.

Polzer ‘778 discloses an external vehicle rearview mirror 1 having a glass support plate 9 for supporting the reflective element 9.9, and a mirror support 5 comprising a fastening plate 5.1 and a clamp ring 7. The clamp ring 7 is provided with four curved circumferentially distributed grooves 7.8. The glass support plate 9 has four spaced, T-shaped extensions 9.3 adapted for insertion into the grooves 7.8. When the glass support plate 9 is rotated relative to the clamp ring 7, the spaced extensions 9.3 are locked into the grooves 7.8, thereby fixing the reflective element 9.9 to the fastening plate 5.1.

Polzer ‘778 also discloses a mirror housing 3 having several integral supports 3.4, 3.5 arranged near the center to which the mirror support 5 is fastened. As illustrated in Figure 2, the mirror support 5 comprises a ball joint assembly. The fastening plate 5.1 is provided with a socket-type receptacle which receives a ball extending orthogonally from a mounting plate. The mounting plate is attached to the supports 3.4, 3.5 by fasteners passing through the mounting plate into the supports 3.4, 3.5. The glass support plate 9 is rotatably attached to the housing 3 through the mirror support 5.

The Examiner identifies the housing 3 as a mounting bracket, and the supports 3.4, 3.5 along with "the screws of element 5" as an interlocking fastener assembly. The Examiner also identifies the supports 3.4, 3.5 as a first array of interlocking fasteners and "the screws of element 5" as a second array of interlocking fasteners.

The claimed invention is not anticipated under §102 unless each and every element of the claimed invention is found in the prior art. *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 231 USPQ 81, 90 (Fed. Cir. 1986). To anticipate, a single reference must teach each and every limitation of the claimed invention. *Eolas Technologies Inc. v. Microsoft Corp.*, 399 F.3d 1325, 1335; 73 U.S.P.Q.2D (BNA) 1782 (Fed. Cir. 2005). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The rejection fails to satisfy these standards.

Claim 1 has been amended and now calls for an interlocking fastener assembly for removably attaching the reflective element assembly to the mounting bracket, comprising a first array of interlocking fasteners attached to and extending away from one of the reflective element assembly and the mounting bracket, and a second array of interlocking fasteners attached to and extending away from the other of the reflective element assembly and the mounting bracket, and configured to interlock with the first array and to secure said one of the reflective element assembly and the mounting bracket to the other of the reflective element assembly and the mounting bracket. The interlocking fasteners of the first array have a configuration identical to the interlocking fasteners of the second array. Polzer '778 does not disclose these limitations.

Polzer '778 does not disclose interlocking fasteners of a first array having a configuration identical to interlocking fasteners of a second array. If, as asserted by the Examiner, the fasteners of element 5 comprise a second array of interlocking fasteners, the first array of interlocking fasteners, i.e. the supports 3.4, 3.5, in no way have a configuration identical to the second array of interlocking fasteners i.e. "the screws of element 5."

Moreover, the supports 3.4, 3.5 attach to and extend away from the housing 3, i.e. the Examiner's mounting bracket. The Examiner asserts that the fasteners of element 5 comprise the second array of interlocking fasteners. Thus, the fasteners of element 5 must attach to and extend away from the reflective element assembly, i.e. the glass support plate 9 and mirror glass 9.9. However, the fasteners of element 5 do not attach to or extend away from the glass support

plate 9 or the mirror glass 9.9. The fasteners of element 5 attach to the mounting plate and the supports 3.4, 3.5. Furthermore, the fasteners of element 5 extend away from the supports 3.4, 3.5. The fasteners of element 5 cannot reasonably be found to attach to and extend away from the glass support plate 9 and the mirror glass 9.9. Thus, Polzer '778 does not teach each and every limitation of the invention of amended claim 1, and Polzer '778 does not disclose an identical invention in as complete detail as is shown in amended claim 1. Claim 1, as amended, is patentable over Polzer '778.

Claims 12, 13, and 18 depend, directly or indirectly, from claim 1, and are patentable over Polzer '778 for the same reasons. Applicants request withdrawal of the rejection and the allowance of claims 1, 12, 13, 16, and 18.

Claim 19 has been amended and calls for a motor vehicle comprising at least one mirror system for providing a rearward view to the operator of the motor vehicle. The mirror system comprises identically the mirror assembly of amended claim 1.

For the same reasons as discussed above that amended claim 1 is patentable over Polzer '778, amended claim 19 is patentable over Polzer '778.

Claims 30 and 36 depend from claim 19, and are patentable over Polzer '778 for the same reasons. Applicants request withdrawal of the rejection and the allowance of claims 19, 30, and 36.

Claims 1, 2, 8-20, and 26-37 stand rejected under 35 U.S.C. §102(b) as allegedly anticipated by U.S. Patent No. 5,355,255 to Assinder. The rejection is traversed.

Assinder '255 discloses a review mirror system comprising a mirror glass 34 attached to a mounting plate 32 which is, in turn, attached to a mounting plate 20. The mounting plate 20 is provided with socket formations 18, 22, 30 adapted for engagement with spherical formations 16, 24. The spherical formations 16, 24 are attached to a support pillar 14 and jackscrew 26, respectively, extending toward the mounting plate 20 from the interior of a mirror housing 10.

The mounting plate 20 can be attached to the mounting plate 32 through the engagement of L-shaped projections 48, 50 attached to the mounting plate 32 with a resilient beam 60 extending along one edge of the mounting plate 20.

Claims 1, 2, 8-20, and 26-37 are not anticipated by Assinder '255. The Examiner asserts that the interlocking fastener assembly comprises elements 18, 22, 30, and elements 16, 24, that the first array of interlocking fasteners comprises element 16, 24, and that the second array of interlocking fasteners comprises element 18, 22, 30.

Elements 18, 22, 30, and 16, 24 do not satisfy the limitations of amended claims 1, 19, and 37, which, in part, call for the interlocking fasteners of the first array to have a configuration identical to the interlocking fasteners of the second array. The spherical formations 16, 24 of the Examiner's first array do not have a configuration identical to the socket formations 18, 22, 30 of the Examiner's second array. Thus, Assinder '255 does not teach each and every limitation of the invention of amended claims 1, 19, and 37, and Assinder '255 does not disclose an identical invention in as complete detail as is shown in amended claims 1, 19, and 37. Amended claims 1, 19, and 37 are patentable over Assinder '255.

Claims 2 and 8-18 depend, directly or indirectly, from amended claim 1, and are patentable over Assinder '255 for the same reasons. Claims 20 and 26-36 depend, directly or indirectly, from amended claim 19, and are patentable over Assinder '255 for the same reasons. Applicants request withdrawal of the rejection and the allowance of claims 1, 2, 8-20, and 26-37.

Claims 1, 12, 13, 16, 19, 30, 31, and 34 are rejected under 35 U.S.C. 102(e) as being anticipated by Brechbill et al ('872). The rejection is traversed.

Brechbill '872 discloses a system for fastening a support plate 26 holding a mirror glass 13 to a mirror positioning motor 20 using slots 24 and posts 22, which are engaged by sliding the slots 24 relative to the posts 22.

Claims 1, 12, 13, 16, 19, 30, 31, and 34 are not anticipated by Brechbill '872. The Examiner asserts that the slots 24 and posts 22 comprise the interlocking fastener assembly. As discussed above, amended claims 1 and 19 call for interlocking fasteners of a first array to have a configuration identical to interlocking fasteners of a second array. The slots 24 do not have a configuration identical to the configuration of the posts 22. Thus, Brechbill '872 does not teach each and every limitation of the invention of amended claims 1 and 19, and Brechbill '872 does not disclose an identical invention in as complete detail as is shown in amended claims 1 and 19. Amended claims 1 and 19 are patentable over Brechbill '872.

Claims 12, 13, and 16 depend, directly or indirectly, from amended claim 1, and are patentable over Brechbill '872 for the same reasons. Claims 30, 31, and 34 depend, directly or indirectly, from amended claim 19, and are patentable over Brechbill '872 for the same reasons. Applicants request withdrawal of the rejection and the allowance of claims 1, 12, 13, 16, 19, 30, 31, and 34.

**Rejection Under 35 U.S.C. §103(a)**

Claims 3-5 and 21-23 stand rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Assinder '255. The rejection is traversed.

The Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time the invention was made "to modify plastic material of the mounting panel of Assinder to include a synthetic resin, a thermoplastic material or gas-injected plastic material having a plurality of microscopic voids, as is well known in the art, since it has been held to be within the general skill of a worker to select a known material on the basis of its suitability for the intended use and purpose of obtaining a degree of resiliency."

The standards for a finding of obviousness must be strictly adhered to. Simply citing one or more prior art references that illustrate different facets of the invention and then concluding

that it would be obvious to combine the references to create the applicant's invention is wholly inadequate.

A claimed invention is unpatentable if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art....The ultimate determination of whether an invention would have been obvious under 35 U.S.C. §103(a) is **a legal conclusion based on underlying findings of fact.**<sup>1</sup>

A critical step in analyzing the patentability of claims pursuant to section 103(a) is casting the mind back to the time of invention, to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field....Close adherence to this methodology is especially important in cases where the very ease with which the invention can be understood may prompt one "to fall victim to the insidious effect of a hindsight syndrome wherein that which only the invention taught is used against its teacher."

Most if not all inventions arise from a combination of old elements....Thus, every element of a claimed invention may often be found in the prior art....However, **identification in the prior art of each individual part claimed is insufficient to defeat patentability of the whole claimed invention**....Rather, to establish obviousness based on a combination of the elements disclosed in the prior art, **there must be some motivation, suggestion or teaching of the desirability of making the specific combination** that was made by the applicant....Even when obviousness is based on a single prior art reference, there must be a showing of a suggestion or motivation to modify the teachings of that reference.

The motivation, suggestion or teaching may come explicitly from statements in the prior art, the knowledge of one of ordinary skill in the art, or, in some cases the nature of the problem to be solved....In addition, the teaching, motivation or suggestion may be implicit from

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<sup>1</sup> The underlying factual inquiries include (1) the scope and content of the prior art; (2) the level of ordinary skill in the prior art; and (3) the differences between the claimed invention and the prior art. *Graham v. John Deere Co.*, 383 U.S. 1, 17, 15 L. Ed. 2d 545, 86 S. Ct. 684 (1966).

the prior art as a whole, rather than expressly stated in the references....The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art....Whether the Patent Office Examiner relies on an express or an implicit showing, **the Examiner must provide particular findings related thereto....Broad conclusory statements standing alone are not "evidence."**

*In Re Werner Kotzab*, 217 F.3d 1365; 55 U.S.P.Q.2d (BNA) 1313 (Fed. Cir. 2000)(citations omitted)(emphasis added).

The Examiner has failed to identify with sufficient particularity a motivation, suggestion, or teaching of the desirability of modifying Assinder '255 to arrive at Applicants' invention. There has been no statement identified in Assinder '255, there has been no discussion of the knowledge of one of ordinary skill in the art or the nature of the problem to be solved, there has been no identification of what the teachings of Assinder '255, the knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to one of ordinary skill in the art as required for a showing of motivation. Rather, the Examiner has simply relied upon "broad conclusory statements standing alone," which can only lead to the conclusion that the Examiner is simply relying on impermissible hindsight reconstruction of Applicants' invention.

Even if the modification of Assinder '255 were proper, which Applicants do not concede, the modification still would not reach Applicants' invention. As discussed above, claims 1 and 19, in part, call for the interlocking fasteners of the first array to have a configuration identical to the interlocking fasteners of the second array. The spherical formations 16, 24 of Assinder '255 do not have a configuration identical to the socket formations 18, 22, 30. Thus, regardless of the material from which the Assinder '255 device is fabricated, the resulting device would still not reach the device of amended claims 1 or 19. Amended claims 1 and 19 are patentable over Assinder '255, as modified.



Because claims 3-5 and 21-23 depend from claims 1 and 19, respectively, they are patentable over Assinder '255 for the same reasons. Applicants request withdrawal of the rejection and the allowance of claims 3-5 and 21-23.

Claims 2-5, 8-11, 14, 15, 19-23, 26-29, 32, 33, and 37 stand rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Brechbill '872.. The rejection is traversed.

The Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time the invention was made "to modify the motor unit (20) of Brechbill et al to include a tilt actuator for vertically and horizontally tilting the reflective element assembly, as is commonly used and employed in the mirror art, in order to adjust a rearward field of view."

Even if the modification of Brechbill '872 were proper, which Applicants do not concede, the modification still would not reach Applicants' invention. As discussed above, Brechbill '872 does not disclose interlocking fasteners of a first array having a configuration identical to interlocking fasteners of a second array. Thus, amended claims 19 and 37 are patentable over Brechbill '872.

Because claims 20-23, 26-29, 32, and 33 depend from claim 19, they are for the same reason patentable over Brechbill '872. Claims 2-5, 8-11, 14, and 15 depend from claim 1. As discussed above, amended claim 1 is patentable over Brechbill '872. Thus, for the same reasons, claims 2-5, 8-11, 14, and 15 are patentable over Brechbill '872.

Applicants request withdrawal of the rejection, and the allowance of claims 2-5, 8-11, 14, 15, 19-23, 26-29, 32, 33, and 37.

### **CONCLUSION**

For the reasons discussed above, all claims in the Application are allowable over the prior art of record. Nevertheless, Applicants are filing a Request for Continued Examination contemporaneously herewith pursuant to 37 C.F.R. §1.114. Prompt notification of allowability

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is respectfully requested. If there are any outstanding issues which the Examiner feels may be resolved by way of telephone conference, the Examiner is cordially invited to contact the undersigned to resolve these issues.

Respectfully submitted,  
KEITH D. FOOTE ET AL.

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